

The Department does not consider the viewing and downloading of text and similar data over the Internet to be the transfer of tangible personal property. See 86 Ill. Adm. Code 130.101. (This is a GIL).

October 15, 2004

Dear Xxxxx:

This letter is in response to your letter dated April 8, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are a CPA firm and represent many Internet start-up companies located in the STATE. Many of our high-tech clients are selling Internet related products and services from their own web site. Although our clients are small, they are competing with some of the largest corporations and financial institutions in the country

Online bill pay:

Some of our clients provide online bill pay services. Online bill pay allows a customer to make an online payment to a vendor or a supplier through the Internet using a third-party provider contracted by our client. The third-party Internet server could be located in or outside of your state. A customer can make a one-time payment or schedule multiple recurring payments that are automatically sent electronically or by check to any payee in the United States. The payment history or data is permanently stored online on the third-party secured website. The customer has the option to view their payment history using custom report options online or download the data into a prepackaged bookkeeping software program located on the customer's own computer.

Fee:

The customers can be charged a flat monthly fee, per transaction fee, or a combination of monthly plus a transaction fee. There is no charge for using the custom report option online, printing a back-up copy, or downloading the data into the customer's own bookkeeping program.

Taxability of online bill pay:

Given that the seller has nexus with your state and that the seller's customers are located in your state, are the charges for accessing an in-state or an out-of-state Internet website to utilize the online bill pay service explained above subject to sales or use tax in your state? Does the customer's ability to electronically download their data into a third-party bookkeeping program or print a back-up copy of their payment history change your answer?

DEPARTMENT'S RESPONSE:

The Department does not consider the viewing and downloading of text and similar data over the Internet to be the transfer of tangible personal property. Therefore, the providing of access to payment history or data stored online over the Internet by your client is not subject to liability under the Retailers' Occupation Tax Act, Use Tax Act, Service Occupation Tax Act or Service Use Tax Act.

Please note, however, your letter references "prepackaged bookkeeping software" which is generally considered canned software. The transfer of any canned software (or update of canned software) is considered the transfer of tangible personal property and will be subject to Retailers' Occupation Tax and Use Tax liability. Sales of canned software are taxable regardless of the means of delivery. See 86 Ill. Adm. Code 130.1935(a). For instance, the transfer or sale of canned software downloaded electronically would be taxable.

If your client only charges for the search and downloading of information, and does not charge for the telecommunications transmission, then those transactions are not subject to Telecommunications Excise Tax and Simplified Municipal Telecommunications Tax liability. See 35 ILCS 630/1 et seq. and 35 ILCS 636/5-1 et seq. Should your client charge its customers for transmission and telephone line charges, then the above mentioned telecommunications taxes would apply. Charges for data processing and information retrieval are not taxable. See 86 Ill. Adm. Code 495.100(c). If retailers provide both transmission (such as telephone line charges) and data processing services, the charges for each must be separately stated and identified in the books and records of the retailers. If such charges are not separately stated in this manner, then all charges are taxable.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk